



DHCD

Maryland Department of Housing
and Community Development

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Deputy Secretary Clarence Snuggs – Written Testimony

Chairman Frank, Ranking Member Bachus, distinguished members of the Committee; I am Clarence Snuggs, Deputy Secretary of the Maryland Department of Housing and Community Development. Thank you for giving me the opportunity to testify before you on the Housing Preservation and Tenant Protection Act of 2008. I also want to thank you for your leadership on this issue, and your commitment to finding solutions to preserving affordable housing for the nation's low income families.

The State of Maryland and DHCD are strongly committed to preserving affordable rental housing. Back in the 1990s, the Maryland General Assembly enacted the Maryland Assisted Housing Preservation Act ("MAHPA"), Housing and Community Article, Annotated Code of Maryland, Sections 7-101 – 7-501, which applies to projects that have mortgages insured or assisted under certain federal programs or the project or owner receives project based Section 8 rental assistance. It also applies only to the "owners" (any person or entity that holds legal title, any mortgagee in possession, receiver, or trustee) of those projects.

MAHPA requires that owners give notice of certain "protected actions" to the local jurisdiction, the Secretary of the Department of Housing and Community Development, the local housing authority, the tenant's association (if any), and the individual tenant households within one-two years prior to the action.

"Protected Actions" are:

- The payment in full before maturity of any mortgage that is:
 - Insured under Section 221(d)(3) of the National Housing Act and assisted under
 - Section 101 of the Housing and Urban Development Act of 1965, or
 - Section 8 of the United States Housing Act of 1937,
 - Insured under Section 221(d)(3) and bears an interest rate determined under Section 221(d)(5) of the National Housing Act,
 - Insured or assisted under Section 202 or Section 236(a) or (b) of the National Housing Act,
 - Insured or assisted under Section 515 of the Housing Act of 1949, or
 - A mortgage that is held by the United States Department of Housing and Urban Development ("HUD") and insured or assisted under any of the previously referred to programs.



- The termination before expiration or failure to exercise any stated renewal option under any agreement providing for project-based Section 8 assistance to any units in an assisted project,
- The termination, including any failure to extend following the expiration, of any agreement providing for project-based Section 8 assistance to any units in an assisted project, or
- The sale or conveyance of an assisted project by the owner in conjunction with or within one year following the effective date of any of the events previously described.

Owners taking a protected action must:

- Offer the right of first purchase to the local housing authority and the local jurisdiction,
- Offer the right of first purchase to any of the following, provided they have registered with the Secretary of Housing and Community Development:
 - Tenant organizations,
 - Tax-exempt low income housing developers,
 - And any other individual or entity not related to the owner with experience in low-income housing.
- Require the purchaser to record a covenant in the local land records restricting the use of the units to residential real property for the greater of the remaining term of any rental assistance agreement or 20 years (if not purchased under a right of first purchase).
- Provided that the project is not purchased under a right of first offer, the owner, upon taking the protected action, must offer the following:
 - \$475 to each assisted household on the date the household vacates the unit and reimbursement of relocation expenses over \$475 up to \$950, and
 - Lease extensions for at least one year from the date of the owner's notice with rent increases limited to one per year on the anniversary date of the lease and limited in amount by the increase in the Consumer Price Index, or
 - Lease extensions for up to three years for households containing senior citizens, the handicapped, or minors with rent increases limited to one per year on the anniversary date of the lease and limited in amount by the increase in the Consumer Price Index.
 - Some assisted households may be entitled to additional compensation equal to three months rent.

Owners are exempt from MAHPA (in general), if:

- Prior to the taking of a protected action, they record a covenant in the local land records continuing the income restrictions on the assisted units for the remainder of the applicable term of the mortgage, or
- If the sale or conveyance of the property is made subject to the existing mortgage.

Over the past five years, DHCD has preserved over 4,300 affordable rental units through the use of Mortgage Revenue Bonds, Low Income Housing Tax Credits, State financing, and other resources. We have committed \$75 million in bond authority for preservation this year, and we are currently a finalist for MacArthur Foundation funding for our past and future commitment to preservation efforts. Additionally, we have re-engineered our State funded lending and insurance products to facilitate preservation. We have been proactive in stepping out of the bureaucratic box to preserve affordable housing opportunities in Maryland and look forward to working with the federal government to do the same.

While these accomplishments are noteworthy, based on information from the National Housing Trust, we have over 16,700 affordable units at risk of being lost from the Section 8 Portfolio over the next 4 years. This does not include units such as tax credit units that may be lost as well. The need to preserve this housing is real, especially since it assists some of our neediest families.

DHCD, in addition to being a Cabinet Agency, is also the State's Housing Finance Agency. We support the language in this bill that gives States and State Housing Finance Agencies greater control and participation in the preservation process. We, the State HFAs are the right place to direct statewide preservation authority because we have a favorable track record of supporting preservation; we know the variations in our states. Preservation cannot be one size fits all. We also have the resources --federal and state -- to make preservation happen and the relationships with private sector lenders and developers as well as local governments to craft a solution.

What we need most from the federal government is flexibility and timely decisions. HUD often works out of its "silos" when a team approach that deals with all aspects of any one project would be a better approach. We are a Contract Administrator (CA) for many projects that we are refinancing and it can be difficult to determine who at HUD actually controls the decision about renewing a Section 8 contract and rent increase. Preservation demands new ways of doing business, teamwork and flexibility are key.

Regional or Field HUD offices should be where most decision making occurs with the ability to delegate decision making to state HFAs. We have an excellent working relationship with the Baltimore HUD office and have been able to sit down and negotiate a first-in the nation Intercreditor Agreement designed to streamline the processing of financing packages that involve both federal and State resources. The FHA Risk Share Program and MOUs for subsidy layering requirements are similar examples of

coordinated and delegated decision making between HUD and its sister State agencies. These agreements have a longstanding history of protecting the federal government's interest while facilitating timely and prudent production and preservation of affordable rental housing

What is most important is that the bill enables HUD field offices to defer to requests for changes in existing loan terms and rental assistance contracts that are approved by the State HFA that is refinancing the project. We would also ask that the bill language allow for delegated underwriting and approval of changes in project based rental assistance within some broad parameters. This could be developed following the successful FHA Risk Share and subsidy layering models. There is precedence for this intergovernmental partnership it is efficient and effective government in action

In that light, we would ask that this legislation include a provision that would establish a demonstration program to waive the numerous rules and regulations of the preservation process. The amount of time it takes to preserve properties is one of the biggest obstacles in actually doing deals. We think this provision should be modeled along the HFA Risk Share model that sets basic parameters regarding what protections HUD has to have, but gives the field offices and State HFAs the ability to move quickly when preservation opportunities arise.

We also have some additional suggestions:

The proposed legislation calls for prioritizing the order in which projects are handled for preservation based on the date the old contract expires. This may not be the best approach, as we need to be able to refinance the project when it come to us for financing so we would eliminate the requirement that you have to do the projects that expire first before you do those that expire in the following year. Rather, the legislation should allow the State HFA to set a priority for a project as long as it's within some larger window of expiration – for example, everything within five years expiration should be preserved first before those projects whose contracts are expiring in six to 10 years.

We were pleased to see the requirements that HUD and USDA/Rural Housing Services work together to create a database of subsidized properties. What we would also like to see is language that calls for the coordination of rules and financings between HUD and RHS. Therefore, we would also like to see a requirement for HUD and RHS to develop an Intercreditor agreement that we can all use if a project is funded by both.

We would also move away from the one to one replacement requirement. One to one replacement on site may not always make sense due to density issues, nor may it always be the best policy for accessing Transit Oriented Development (TOD), Smart Growth, or mixed income housing. The better solution will depend on the property and location. If density of low income units is reduced on one site, the local government or state should have access to project based Section 8 to place in other projects -- a way to port a project based voucher and maybe put a few restricted units in an otherwise market rate property. This "pot" of project based vouchers should be controlled at the State level and would

have to replace the total number of units lost with the same number of units, but not necessarily in the same location as the preserved project. To allay concerns that too much affordable housing might be lost at the current location, it would be acceptable to mandate that at least some percentage of units in the preserved project must serve households below fifty percent of median income or the disabled.

Lastly, while we have some resources to finance preservation, we need more. This would include an increase in the cap on MRBs, and an increase in Federal Low-Income Housing Tax Credit, as well as more federal funding for the HOME program or other, new sources of funding which can finance the improvements and repairs preserved properties often need. It would be particularly useful to see provisions that would fund a program to provide short term preservation funding to enable quick acquisition of at-risk properties before using MRBs and Tax Credits are used as permanent financing options. HOME rules and CDBG rules are too complicated for tracking on the back end so it is difficult to use these programs for short term acquisition financing. The new resource would have to be flexible and be designed to work in concert with or in deference to existing programs and requirements

Thank you again for giving me the opportunity to testify.